

Committee of Presiding Judges
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ARIZONA SUPREME COURT

In the matter of:

PETITION TO AMEND RULES 10.2, 17.4,)	
32.10(a), 33.10(a), and 35.4, RULES OF)	Supreme Court
CRIMINAL PROCEDURE; RULE 42.1,)	No. 2021- _____
RULES OF CIVIL PROCEDURE FOR)	
THE SUPERIOR COURTS; RULE 6,)	
RULES OF FAMILY LAW PROCEDURE;)	
RULE 2(B) RULES OF PROCEDURE)	
FOR THE JUVENILE COURT; RULE 9(c),)	
RULES OF PROCEDURE FOR EVICTION))	
ACTIONS; RULE 133(d) JUSTICE COURT))	
RULES OF CIVIL PROCEDURE; RULE)	
7, RULES OF COURT PROCEDURE FOR))	
CIVIL TRAFFIC AND CIVIL BOATING)	
VIOLATIONS; AND ETHICAL RULE)	
8.4(g) OF RULE 42, RULES OF THE)	
SUPREME COURT)	
_____)	

Pursuant to Rule 28 of the Rules of the Supreme Court, the Supreme Court Committee of Presiding Judges respectfully petitions the Court to abrogate the peremptory change of judge rules appearing in Appendix A (hereinafter “the rules”) and the related Ethical Rule 8.4(g) of the Arizona Rules of Professional Conduct; and to remove cross-references to Criminal Rule 10.2 in Criminal Rules 17.4(g), 32.10(a), 33.10(a), and 35.4.

GROUNDS FOR APPROVAL OF THE PETITION

The peremptory change of judge rules confer an absolute right on parties to remove a trial judge without cause. Litigants in the federal courts and most states must show cause for removing a judge. Arizona is one of eighteen mostly western states that have a peremptory change of judge rule.¹

Due to concerns with abuse of Criminal Rule 10.2, this Court appointed an *ad hoc* committee to study attorneys' use of the rule and to recommend whether the rule should be repealed or somehow amended to curb perceived abuses (Supreme Court Admin. Order No. 2000-8). Following the committee's investigation, the Court amended Rule 10.2 on an experimental basis but delayed a final decision for two years during which time the courts reported data on the experimental rule's impact,

¹ Along with Arizona, "these include Alaska, [ALASKA STAT. § 22.20.022 \(2015\)](#); ALASKA R. CIV. P. [42\(c\)](#); ALASKA R. CRIM. P. [25\(d\)](#), California, CAL. CIV. PROC. CODE [§ 170.6\(a\)](#) (West 2016). Idaho, IDAHO R. CIV. P. [40\(d\)\(1\)](#); R.CrimP 25(a) Illinois, [735 ILL. COMP. STAT. ANN. 5/2-1001 \(West 2016\) \(civil\)](#); [725 ILL. COMP. STAT. ANN. 5/114-5 \(West 2016\)](#) (criminal), Indiana, IND. R. TRIAL P. [76\(B\) \(civil\)](#); Minnesota, [MINN. R. CIV. P. 63.03](#); MINN. R. CRIM. P. [26.03\(14\)\(4\)](#), Missouri, MO. SUP. CT. R. [51.05 \(civil\)](#); MO. SUP. CT. R. [32.07 \(criminal\)](#), Montana, MONT. CODE ANN. [§ 3-1-804 \(West 2015\)](#) (civil & criminal). Nevada, NEV. SUP. CT. R. [48.1 \(civil\)](#), New Mexico, [NMSA 1978, Section 38-3-9 \(1985\)](#) and NM RCrimP 5-106, North Dakota, N.D. CENT. CODE [§ 29-15-21](#) (2015) (civil & criminal), Oregon, [OR. REV. STAT. ANN. § 14.250 \(West 2016\)](#); [OR. REV. STAT. ANN. § 14.260 \(West 2016\)](#); [OR. REV. STAT. ANN. § 14.270 \(West 2016\)](#) (civil & criminal), South Dakota, S.D. CODIFIED LAWS [§§ 15-12-19](#) to -37 (civil & criminal), Texas, [TEX. GOV'T CODE ANN. § 74.053 \(West 2015\) \(civil\)](#), Washington, [WASH. REV. CODE ANN. § 4.12.050 \(West 2016\) \(civil\)](#); WASH. SUPERIOR CT. CRIM. R. 8.9 (criminal), and Wisconsin, [WIS. STAT. ANN. § 801.58 \(West 2016\) \(civil\)](#); [WIS. STAT. ANN. § 971.20 \(West 2016\)](#) (criminal). None of these states require that the alleged grounds for change of judge, if even required to be stated, must be proven or even supported by fact." The Honorable Gary L. Clingman, *A Clash of Branches: The History of New Mexico's Judicial Peremptory Excusal Statute and A Review of the Impact and Aftermath of Quality Automotive Center, LLC v. Arrieta*, 46 N.M.L. Rev. 309, 336 (2016).

see R-00-0025. The data showed the amended rule decreased the number of notices filed in some courts substantially, but not statewide. In fact, some courts experienced an increase in filings.

The committee identified a number of perceived and potential abuses and problems with Rule 10.2, which the current rule prohibits as “improper purposes” for invoking the rule, including that lawyers and law firms were filing notices in a blanket fashion thereby keeping some judges off the criminal bench entirely; or to obtain a delay, a severance, a more convenient geographical location, an advantage in plea bargaining or at sentencing, or to remove a judge for reasons of race, gender, or religious affiliation. In fact, the rule change that followed from the committee’s examination and report now requires attorneys to avow they are not noticing a judge for improper purposes. However, as the court of appeals has twice ruled, Rule 10.2 prohibits a trial court from determining the propriety of reasons for the notice; the court’s sole remedy in the case of suspected impropriety is to report the attorney to the State Bar for possible discipline under E.R. 8.4(g).² And, “[n]othing in the rule prohibits individual attorneys who work for an agency or firm from exercising their *individual discretion* to repeatedly file Rule 10.2 notices naming a particular judge.”³

² *Gilbert Prosecutor's Office v. Foster*, 245 Ariz. 15, 18, ¶ 11, 424 P.3d 416, 419 (App.Div.1, 2018), *citing Bergeron ex rel. Perez v. O'Neil*, 205 Ariz. 640, 647–48, ¶ 21, 74 P.3d 952, 959–60 (App. Div. 2, 2003) review denied.

³ *Bergeron*, at 649, ¶ 26, 74 P.3d at 961.

From an administrative perspective, the challenges posed by peremptory change of judge rules cannot be overstated. They can seriously threaten judges' ability to meet case processing time frames, and to effectively control their calendars. The delay caused by needing to replace a judge who is noticed can be significant. The rules also can cause workload disparities among judges and a significant increase in the cost of managing a court, particularly in smaller more geographically remote courts that can ill afford it.

Many superior court judges and all justices of the peace are elected in Arizona, yet these rules allow parties to remove a judge from serving thereby contravening the will of the voters. Similarly, in those counties where superior court judges are appointed, the rules undermine the constitutionally prescribed and conscientious efforts of the Commission on Trial Court Appointments in selecting only the best-qualified candidates and the Governor's appointment.

Another unintended consequence of these rules is that they can operate to hide the truth when a judge needs to be removed for cause or needs to address deficiencies in areas such as judicial demeanor or knowledge of the law.

It is also worth mentioning that the rules have been suspended by this Court during the COVID-19 health emergency without any apparent effect upon the justice afforded to litigants who might otherwise exercise a peremptory challenge.⁴

⁴ Supreme Court Administrative Order No. 2020-75.

In 2013, the Wyoming Supreme Court repealed its peremptory judge disqualification rules applicable in criminal and juvenile cases.⁵ In doing so, the court made the following findings that apply equally to Arizona:

The blanket use of the disqualification rules negatively affects the orderly administration of justice. Judicial dockets are interrupted, replacement judges must be recruited, sometimes including their court reporters, and unnecessary travel expenses are incurred. Peremptory disqualifications of assigned judges affect not only the specific cases at issue, but also the caseload of judges and the cases of other litigants whose cases are pending before the removed judge and the replacement judge at the same time. . . . These costs cause financial burdens upon district courts budgets. Each district court has a limited budget for outside judges brought in to preside over cases in which challenges have been utilized. Criminal and juvenile cases comprise a significant portion of the cases on a district court's docket and, consequently, multiple disqualifications in those types of cases have a severe impact on the operation of the district court.

In addition, when peremptory challenges are exercised, delays in the timely resolution of juvenile and criminal cases may result. Quick resolution of matters involving children is not only statutorily required, but of paramount concern to this Court. Further, any delay in criminal proceedings resulting from a judge's removal, however slight, can impact a defendant's speedy trial rights, potentially contributing to a dismissal of criminal charges.

Allowing unfettered peremptory challenges of judges encourages judge shopping. In practice, it permits parties to strike a judge who is perceived to be unfavorable because of prior rulings in a particular type of case rather than partiality in the case in question. Disqualifying a judge because of his or her judicial rulings opens the door for manipulation of outcomes.

⁵ *Wyoming Supreme Court Order Repealing Rule 21.1(a) of the Wyoming Rules of Criminal Procedure and Order Amending Rule 40.1 of the Wyoming Rules of Civil Procedure (Nov. 26, 2013).*

Such undermines the reputation of the judiciary and enhances the public's perception that justice varies according to the judge. It also seriously undercuts the principle of judicial independence and distorts the appearance, if not the reality, of fairness in the delivery of justice.

This Court has delegated to the presiding superior court judges the task of overseeing court operations in their respective counties. At a recent meeting, the members of the Committee of Presiding Judges unanimously approved repeal of the peremptory change of judge rules statewide in all case types. Effective administration of the courts is essential to earning the public's trust and confidence in the judiciary. That trust is undermined by the rules this petition seeks to abrogate. Accordingly, Petitioner asks the Court to repeal the peremptory change of judge rules and related ethical rule as shown in Appendix A.

Respectfully submitted this ___ day of January, 2021.

Supreme Court Committee of Presiding Judges:

By: /S/

Kyle Bryson, Presiding Judge
Pima County

By: /S/

James Conlogue, Presiding Judge
(ret.) Cochise County

By: /S/

Tom Fink, Presiding Judge
Santa Cruz County

By: /S/

Charles W. Gurtler, Presiding Judge
Mohave County

By: /S/

David Haws, Presiding Judge
Yuma County

By: /S/

John Napper, Presiding Judge
Yavapai County

By: /S/

Michael Peterson, Presiding Judge
Graham County

By: /S/

Jessica Quickle, Presiding Judge
La Paz County

By: /S/

Dan Slayton, Presiding Judge
Coconino County

By: /S/

Monica Stauffer, Presiding Judge
Greenlee County

By: /S/ _____
Robert J. Higgins, Presiding Judge
(ret.) Navajo County

By: /S/ _____
Michael Latham, Presiding Judge
Apache County

By: /S/ _____
Stephen F. McCarville
Presiding Judge, Pinal County

By: /S/ _____
Joseph Welty, Presiding Judge
Maricopa County

By: /S/ _____
Timothy Wright, Presiding Judge
Gila County

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APPENDIX A

RULES OF CRIMINAL PROCEDURE

~~RULE 10.2. CHANGE OF JUDGE AS A MATTER OF RIGHT~~

~~(a) Entitlement.~~

~~(1) Generally.~~ Each side in a criminal case is entitled to one change of judge as a matter of right. If two or more parties on a side have adverse or hostile interests, the presiding judge or that judge's designee may allow additional changes of judge as a matter of right.

~~(2) Meaning of "Side."~~ Each case, including one that is consolidated, is treated as having only two sides.

~~(3) Per Party Limit.~~ A party exercising a change of judge as a matter of right is not entitled to another change of judge as a matter of right.

~~(4) Inapplicability to Certain Proceedings.~~ A party is not entitled to a change of judge as a matter of right in a proceeding under Rule 32 or a remand for resentencing.

~~(b) Procedure.~~

~~(1) Generally.~~ A party may exercise a right to change of judge by filing a "Notice of Change of Judge" signed by counsel or a self-represented defendant, and stating the name of the judge to be changed. The notice also must include an avowal that the party is making the request in good faith and not for an improper purpose. An attorney's avowal is in the attorney's capacity as an officer of the court.

~~(2) "Improper Purpose."~~ "Improper purpose" means:

~~(A) for the purpose of delay;~~

~~(B) to obtain a severance;~~

~~(C) to interfere with the judge's reasonable case management practices;~~

~~(D) to remove a judge for reasons of race, gender or religious affiliation;~~

~~(E) for the purpose of using the rule against a particular judge in a blanket fashion by a prosecuting agency, defender group, or law firm;~~

~~(F) to obtain a more convenient geographical location; or~~

~~(G) to obtain an advantage or avoid a disadvantage in connection with a plea bargain or at sentencing, except as permitted under Rule 17.4(g).~~

~~(3) *Further Action by the Judge.* If a notice of change of judge is timely filed, the judge should proceed no further in the action, except to enter any necessary temporary orders before the action can be transferred to the presiding judge or the presiding judge's designee. If the named judge is the presiding judge, that judge may continue to perform the functions of the presiding judge.~~

~~(e) **Timing.**~~

~~(1) *Generally.* Except as provided in (e)(2), or extended by local rule, a party must file a notice of change of judge no later than 10 days after any of the following:~~

~~(A) the arraignment, if the case is assigned to a judge and the parties are given actual notice of the assignment at or before the arraignment;~~

~~(B) the superior court clerk's filing of a mandate issued by an appellate court; or~~

~~(C) in all other cases, actual notice to the requesting party of the assignment of the case to a judge.~~

~~(2) *Exception.* Despite (e)(1), if a new judge is assigned to a case less than 10 days before trial (inclusive of the date of assignment), a notice of change of judge must be filed, with appropriate actual notice to the other party or parties, no later than by 5:00 p.m. on the next business day following actual receipt of a notice of the assignment or by the start of trial, whichever occurs earlier.~~

~~(d) **Assignment to a New Judge and Effect on Other Defendants.**~~

~~(1) *On Stipulation.* If a notice of change of judge is timely filed, the notice may inform the court that all the parties have agreed on a judge who is available and willing to accept the assignment. Such an agreement may be honored and, if so, it bars further changes of judge as a matter of right, unless the agreed-on judge later becomes unavailable. If a judge to whom the action has been assigned by agreement later becomes unavailable because of a change of calendar assignment, death, illness, or other legal incapacity, the parties may assert any rights under this rule that existed immediately before the assignment of the action to that judge.~~

~~(2) *Absent Stipulation.* If a timely notice of judge has been filed and no judge has been agreed on, the presiding judge must immediately reassign the action to another judge.~~

~~(3) *Effect on Other Defendants.* If there are multiple defendants, a notice of change of judge filed by one or more defendants does not require a change of judge as to the other defendants, even though the notice of change of judge may result in severance for trial purposes.~~

~~(e) **Waiver.** A party loses the right to a change of judge under this rule if the party participates before that judge in any contested matter in the case, a proceeding under Rule 17, or the beginning of trial.~~

~~(f) **Following Remand.** Unless previously exercised, a party may exercise a change of judge as a matter of right following an appellate court's remand for new trial, and no event connected with the first trial constitutes a waiver. A party may not exercise a change of judge as a matter of right following a remand for resentencing.~~

Rule 10.3 [renumber]

Rule 10.4 [renumber]

RULE 17.4. PLEA NEGOTIATIONS AND AGREEMENTS

(a) through (f) [no changes]

~~(g) **Change of Judge if Plea Withdrawn.** A defendant who withdraws a plea after a presentence report is submitted may exercise a change of judge as a matter of right under Rule 10.2 if the defendant has not previously exercised that right.~~

RULE 32.10. ASSIGNMENT OF A JUDGE

(a) Generally. The presiding judge must, if possible, assign a proceeding for post-conviction relief to the sentencing judge. The provisions of Rules 10.1 ~~and 10.2~~ apply in proceedings for post-conviction relief when the case is assigned to a new judge.

(b) [no changes]

RULE 33.10. ASSIGNMENT OF A JUDGE

(a) Generally. The presiding judge must, if possible, assign a proceeding for post-conviction relief to the sentencing judge. The provisions of Rules 10.1 ~~and 10.2~~ apply in proceedings for post-conviction relief when the case is assigned to a new judge.

(b) [no changes]

RULE 35.4. JURY TRIAL; DISQUALIFICATION OF THE CITING JUDGE

(a) and (b) [no changes]

COMMENT

The self-disqualification of the judge required by this ~~rule~~ does not give the contemnor a pre-sentence challenge of the judge under [Rule 10.2](#).

RULES OF CIVIL PROCEDURE FOR THE SUPERIOR COURTS OF ARIZONA

~~RULE 42.1. CHANGE OF JUDGE AS A MATTER OF RIGHT~~

~~(a) **When Available.** In any action in superior court, except an action in the Tax Court, each side is entitled as a matter of right to a change of one judge. Each action, whether single or consolidated, must be treated as having only two sides. If two or more parties on a side have adverse or hostile interests, the presiding judge may allow additional changes of judge as a matter of right, but each side must have the right to the same number of such changes. The term “judge” as used in this rule refers to any judge, judge pro tem, or court commissioner. The term “presiding judge” as used in this rule refers to the presiding superior court judge in the county where the action is pending, or that judge's designee.~~

~~(b) **Notice Requirements.** A party seeking a change of judge as a matter of right must either file a written notice, or make an oral request on the record, in the manner provided below:~~

~~(1) *Written Notice.* A written notice of change of judge must be served on all other parties, the presiding judge, the noticed judge, and the court administrator, if any, by any method provided in Rule 5(c). The notice must not specify grounds for the change of judge, but must contain:~~

~~(A) the name of the judge to be changed;~~

~~(B) a statement that:~~

~~(i) the notice is timely under Rule 42.1(c);~~

~~(ii) no waiver has occurred under Rule 42.1(d); and~~

~~(iii) the party's side has not been granted a change of a judge as a matter of right previously in the action.~~

~~(2) *Oral Notice.* An oral request for change of judge must include the information required by Rule 42.1(b)(1)(A) and (B). When made, it is deemed to be an “oral notice of change of judge” for purposes of this rule. The judge must enter on the record the date of the oral notice, the requesting party's name, and the judge's disposition of the request. A party obtaining a change of judge based on an oral notice is deemed to have exercised its right to a change of judge under Rule 42.1(a). For purposes of this rule, an oral notice is deemed “filed” on the date that it is made on the record.~~

~~(c) **Time Limits.** A party is precluded from obtaining a change of judge as a matter of right unless it files a timely notice. The following deadlines apply:~~

~~(1) Notice must be filed within 90 days after the party giving notice first appears in the case.~~

~~(2) If an assignment identifies a judge for the first time after the time period set forth in Rule 42.1(e)(1) has expired, or fewer than 10 days before that time period will expire, a notice is timely if filed within 10 days after the party receives notice of the new assignment, or within 10 days after the new judge is assigned, whichever is later.~~

~~(3) If the right to a change of judge is renewed under Rule 42(e), a notice is timely if filed within 15 days after issuance of the appellate court's mandate under Arizona Rule of Civil Appellate Procedure 24.~~

~~(4) A notice of change of judge is ineffective if filed within 3 days of a scheduled proceeding, unless the parties have received fewer than 5 days' notice of that proceeding or the judge's assignment. The filing of an ineffective notice neither requires a change of judge nor bars the party who filed it from later filing a notice of change of judge that satisfies this rule's requirements.~~

~~**(d) Waiver.** A party waives the right to change of a judge assigned to preside over any proceeding in the action, if:~~

~~(1) the party agrees to the assignment;~~

~~(2) the judge rules on any contested issue, or grants or denies a motion to dispose of any claim or defense, if the party had an opportunity to file a notice of change of judge before the ruling is made;~~

~~(3) a scheduling, pretrial, trial setting, or similar conference begins;~~

~~(4) a scheduled contested hearing begins; or~~

~~(5) trial begins.~~

~~**(e) Actions Remanded from an Appellate Court.** In actions remanded from an appellate court, the right to a change of judge is renewed and no event connected with the first trial constitutes a waiver:~~

~~(1) if the appellate decision requires a new trial; and~~

~~(2) the party seeking a change of judge or the side on which the party belongs has not previously exercised its right to a change of judge in the action.~~

~~**(f) Procedures on Notice.**~~

~~(1) *On Proper Notice.* If a notice is timely filed and no waiver has occurred, the judge named in the notice should proceed no further in the action except to make such temporary orders as are absolutely necessary to prevent immediate and irreparable injury, loss, or damage from occurring before the action can be transferred to another judge. If the named judge is the only judge in the county, that judge may also reassign the case.~~

~~(2) *On Improper Notice.* If the court determines that the party who filed the notice is not entitled to a change of judge, the named judge may proceed with the action.~~

~~(3) *Reassignment.*~~

~~(A) *On Stipulation.* If a notice of change of judge is filed, the parties should inform the court in writing if they have agreed on an available judge who is willing to hear the action. An agreement of all parties may be honored and, if so, bars further changes of judge as a matter of right unless the agreed-on judge becomes unavailable. If a judge to whom an action is assigned by agreement later becomes unavailable because of a change of calendar assignment, death, illness, or other incapacity, the parties may assert any rights under this rule that existed immediately before the assignment to that judge.~~

~~(B) *Absent Stipulation.* If no judge is agreed on, the presiding judge must promptly reassign the action.~~

Rule 42.2 [renumber]

RULES OF FAMILY LAW PROCEDURE

RULE 6. CHANGE OF JUDGE AS A MATTER OF RIGHT

(a) Definitions.

~~(1) *Judge.* The term “judge” as used in this rule and Rule 6.1 refers to any judge, judge *pro tem*, or court commissioner.~~

~~(2) *Presiding judge.* The term “presiding judge” as used in this rule refers to the presiding superior court judge in the county where the action is pending, or that judge's designee.~~

(b) Generally. In each action, whether single or consolidated, each party is entitled as a matter of right to a change of judge.

(c) Notice Requirements. A party seeking a change of judge as a matter of right must either file a written notice, or make an oral request on the record, in the manner provided below:

~~(1) *Written Notice.* A written notice of change of judge must be served on all other parties, the presiding judge, the noticed judge, and the court administrator, if any, by any method provided in Rule 43(b). The notice must contain:~~

~~(A) the name of the judge to be changed;~~

~~(B) a statement that:~~

~~(i) the notice is timely under Rule 6(d);~~

~~(ii) no waiver has occurred under Rule 6(e); and~~

~~(iii) the party has not been granted a change of a judge as a matter of right previously in the action. The notice cannot specify grounds for the change of judge.~~

~~(2) *Oral Notice.* An oral request for change of judge must include the information required by Rule 6(c)(1)(A) and (B). When made, it is deemed to be an “oral notice of change of judge” for purposes of this rule. The judge must enter on the record the date of the oral notice, the requesting party's name, and the judge's disposition of the request. A party obtaining a change of judge based on an oral notice is deemed to have exercised its right to a change of judge under Rule 6(b). For purposes of this rule, an oral notice is deemed “filed” on the date that it is made on the record.~~

~~(d) **Time Limits.** A party is precluded from obtaining a change of judge as a matter of right unless the party files a timely notice.~~

~~(1) The notice must be filed 60 or more days before a scheduled contested hearing or trial.~~

~~(2) If a new judge is assigned within 60 days of a scheduled contested hearing or trial, a notice is timely filed as to the newly assigned judge if filed within 10 days after the party receives notice of the new assignment, or within 10 days after the new judge is assigned, whichever is later.~~

~~(3) If a party has received less than 10 days' notice of a proceeding or the assignment of the judge, the party must file a notice at least 3 days before the proceeding.~~

~~(4) If a party has received less than 5 days' notice of a proceeding or a judge assignment, the party may file a notice of change of judge at any time before the proceeding begins.~~

~~(5) If the right to a change of judge is renewed under Rule 6(f), a notice is timely if filed within 15 days after issuance of the appellate court's mandate under ARCAP 24.~~

~~(e) **Waiver.** A party waives the right to change a judge assigned to preside over any proceeding in the action, if:~~

~~(1) the party agrees to the assignment;~~

~~(2) the judge rules on any contested issue, or grants or denies a motion to dispose of any claim or defense, if the party had an opportunity to file a notice of change of judge before the ruling is made;~~

~~(3) a resolution management, scheduling, pretrial, or similar conference begins; or~~

~~(4) a scheduled contested hearing or trial begins.~~

~~(f) **Actions Remanded from an Appellate Court.** In actions remanded from an appellate court, the right to a change of judge is renewed and no event connected with the first trial constitutes a waiver:~~

~~(1) if the appellate decision requires a new trial or contested hearing; and~~

~~(2) the party seeking a change of judge has not previously exercised the party's right to a change of judge in the action.~~

~~(g) **Procedures on Notice.**~~

~~(1) *On Proper Notice.* If a notice is timely filed and no waiver has occurred, the judge named in the notice should proceed no further in the action except to make such temporary orders as are necessary to prevent immediate and irreparable injury, loss, or damage from occurring before the action can be transferred to another judge. If the named judge is the only judge in the county, that judge may also reassign the case.~~

~~(2) *On Improper Notice.* If the court determines that the party who filed the notice is not entitled to a change of judge, the named judge may proceed with the action.~~

~~(3) *Reassignment.*~~

~~(A) *On Stipulation.* If a notice of change of judge is filed, the parties should inform the court in writing whether they have agreed on an available judge who is willing to hear the action. An agreement of all parties may be honored and, if so, bars further changes of judge as a matter of right unless the agreed-on judge becomes unavailable. If a judge to whom an action is assigned by agreement later becomes unavailable because of a change of calendar assignment, death, illness, or other incapacity, the parties may assert any rights under this rule that existed immediately before the assignment to that judge.~~

~~(B) *Absent Stipulation.* If no judge is agreed on, the presiding judge must promptly reassign the action.~~

Rule 6.1 [renumber]

RULES OF PROCEDURE FOR THE JUVENILE COURT

RULE 2. CHANGE OF JUDGE OR COMMISSIONER

Any reference made to a “judge” shall also mean “commissioner”.

A. [no changes]

~~B. Change of Judge Upon Request.~~

~~1. *Grounds.* Any party shall be entitled to request a change of judge as a matter of right.~~

~~2. *Procedure.* A party may exercise his or her right to a change of judge by making a request in open court on the record or by filing a pleading entitled “Notice of Change of Judge” signed by counsel, if any, stating the name of the judge to be changed. A notice of change of judge shall be filed within five (5) days after notice to the requesting party of the assignment of the case to a judge. In the case of a reversal of a judgment or order by an appellate court, a notice of change of judge shall be filed within ten (10) days after the filing of the mandate from an appellate court with the clerk of the court.~~

~~3. *Waiver.* A party loses the right to a change of judge upon request when the party participates before that judge in any contested matter or hearing. Such waiver shall apply to all successive petitions or supplemental petitions filed with respect to the same juvenile or, in the case of a dependency action, the same minor or any other minor known to have at least one biological or adoptive parent in common with such minor, and to all proceedings after remand by an appellate court.~~

~~**C.B. Duty of Judge.** When a notice or an affidavit for change of judge is timely filed, the judge named in the notice or affidavit shall proceed no further in the action except to make such temporary orders as may be absolutely necessary to prevent harm to the child before the action can be transferred to another judge.~~

~~**D.C. Remand by Appellate Court.** When an action is remanded by an appellate court for a new hearing or proceeding, all rights to change of judge exist as set forth in this rule unless the matter is reassigned to the original judge.~~

RULES OF PROCEDURE FOR EVICTION ACTIONS

RULE 9. MOTIONS

a. Motions may be made orally in open court or by filing and serving the opposing party with a copy of a written motion. Pretrial motions shall be ruled on before trial. A court shall not rule on any motion until the opposing party has had a reasonable opportunity to respond.

b. Responses and Replies. Responses and replies to any motion may be made orally in open court or by filing and serving the opposing party with a copy of the written response or reply. The filing of motions, responses and replies shall not delay the times set by statute for proceeding with an eviction action, except for continuances granted for good cause shown or by stipulation of the parties.

~~**c. Motion for Change of Judge.** For purposes of this subsection, a lawsuit has only two sides. A party or a side, if there is more than one plaintiff or one defendant in a lawsuit, may request a change of judge as a matter of right orally or in writing. The party or side must request a change of judge as a matter of right in the precinct where the lawsuit is pending. The request must state that the party or side has not previously requested a change of judge in this lawsuit, that the party~~

~~or side has not waived the party's right to change of judge, and that the request is timely. A request is timely if it is made prior to or at the time of the first court appearance or upon reassignment of the matter to a new judge for trial. A party waives a right to a change of judge if the judge has ruled on any contested motion or issue, or if the trial has started. When a proper and timely request for a change of judge as a matter of right is orally requested or filed, the court must transfer the lawsuit to a new judge within the county for further proceedings.~~

If a party believes that the party will not have a fair and impartial trial before a justice of the peace, then the party must proceed as provided in Arizona Revised Statutes § 22-204, except that any request must be made by the date of the first court appearance and five days' notice is not required.

d. through j. [no changes]

JUSTICE COURT RULES OF CIVIL PROCEDURE

RULE 133. GETTING A TRIAL DATE; TRIAL BY JURY OR TO A JUDGE; CHANGE OF PRECINCT OR JUDGE; DISABILITY OF A JUDGE DURING TRIAL; VERDICT OR DECISION

a. through c. [no changes]

~~**d. Change of judge.** For purposes of this section, a lawsuit has only two sides. A party or a side, if there is more than one plaintiff or one defendant in a lawsuit, may request a change of judge as a matter of right. The party or side must file a notice of change of judge as a matter of right in the precinct where the lawsuit is pending and provide a copy of the notice to the other parties as required by Rule 120. The notice must state that the party or side has not previously requested a change of judge in this lawsuit, that the party or side has not waived the party's right to a change of judge, and that the notice is timely. A notice is not timely if it is filed less than sixty (60) days before the trial date, or if it is filed more than ten (10) days after the court provided the parties with notice of the assignment of a new judge for trial. A party waives a right to a change of judge if the judge has conducted a conference in the lawsuit, if the judge has ruled on any contested motion or issue, or if the trial has started. When a proper and timely notice of change of judge as a matter of right is filed, the court must transfer the lawsuit to a new judge within the county for further proceedings. If a party believes that the party will not have a fair and impartial trial before a justice of the peace, then the party must proceed as provided in Arizona Revised Statutes § 22-204(A). [ARCP ~~42(f)~~42.1; see A.R.S. § 22-204]~~

e. and f. [no changes]

RULES OF COURT PROCEDURE FOR CIVIL TRAFFIC AND CIVIL BOATING VIOLATIONS

~~RULE 7. NON AVAILABILITY OF RIGHT TO NOTICE OF CHANGE OF JUDGE~~ **[Reserved]**

~~The rules of procedure regarding change of judge as a matter of right shall not apply in civil traffic cases except for cases consolidated with criminal matters pursuant to Rule 14.~~

RULES OF THE SUPREME COURT OF ARIZONA RULE 42. ARIZONA RULES OF PROFESSIONAL CONDUCT

ER 8.4. MISCONDUCT

It is professional misconduct for a lawyer to:

(a) through (f) [no changes]

~~(g) file a notice of change of judge under Rule 10.2, Arizona Rules of Criminal Procedure, for an improper purpose, such as obtaining a trial delay or other circumstances enumerated in Rule 10.2(b).~~

~~COURT COMMENT TO EXPERIMENTAL 2001 AMENDMENT TO ER 8.4(G)~~

~~Arizona is one of only a few states that allow by judicial rules a party to notice a change of judge without cause. The purpose of the rule is to allow a party to ask for a new judge when a party may perceive a bias that does not rise to disqualification under the rules allowing a challenge for actual bias or prejudice. Historically, the reasons for exercising a challenge were not inquired into. Just as peremptory challenges of jurors lead to abuses of race or gender based disqualification, however, the peremptory notice of judge has been abused by some to obtain trial delay.~~

~~The rule was amended in 2001 on an experimental basis to make clear that filing a notice of change of judge for an improper purpose, such as trial delay or other circumstances enumerated in Rule 10.2(b), is unprofessional conduct. The Court adopted this amendment and the amendments to Rule 10.2, Rules of Criminal Procedure, in an effort to address abuse of Rule 10.2. If such abuse is not substantially reduced as a result of the amendments at the conclusion of the one year experiment on June 30, 2002, the Court at that time will abolish the peremptory change of judge in most criminal cases as recommended in a proposal by the Arizona Judicial Council. See R-00-0025.~~